

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 404 of 1997
In
SPECIAL CIVIL APPLICATION No. 10829 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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GSRTC - Appellant(s)
Versus
GULABSANG NAVALSANG JADEJA - Defendant(s)

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Appearance :

MR HS MUNSHAW for Petitioner No(s).: 1.

NOTICE SERVED for Respondent No(s).: 1.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date : 27/07/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Mr. H.S. Munshaw, learned counsel for the appellant. Office report shows that fresh notice issued to the respondent was served.
2. The appellant-Gujarat State Road Transport Corporation (GSRTC), being aggrieved by the order dated 17th March, 1997 passed by the learned Single Judge in Special Civil Application No. 10829 of 1996 under which the award dated 2.7.1991 made by the learned Presiding Officer, Labour Court, Rajkot in Reference No./LCR/658 of 1992 has been confirmed, is before this Court.
3. The facts necessary for disposal of the present appeal are that the respondent, after submitting a certificate that he was VIth standard pass, secured the job of driver with the appellant-Corporation. After some time, it was reported that the certificate was forged and bogus and in fact, the driver had only passed Standard-I. It is to be noted that the minimum required educational qualification for driver is Standard IV pass. After receiving the information, a charge sheet was issued to the driver/respondent and an inquiry was made and he was terminated from the services on the ground that he secured the job by playing fraud. The workman/driver preferred a

departmental appeal, which was also dismissed, thereafter, a reference was made. The learned Labour Court directed that the workman be reinstated in service, but however, without back wages. The appellant being aggrieved by the said award, preferred Special Civil Application No. 10829 of 1996, which came to be finally disposed of on 17.3.1997, therefore the appellant is before this Court.

4. Learned counsel for the appellant strenuously submitted that if some wrong was committed earlier by the appellate committee in not terminating the services of a similarly situated employee, who had committed similar misconduct, the law would not change and the punishment awarded by the disciplinary authority and confirmed by the appellate authority could not be interfered with. His submission is that if one wrong is followed, then, series of wrongs would perpetuate and would pollute the whole administration.

5. From the records, it appears that one Kala Mapa also secured services with the appellant after submitting a forged certificate. In the inquiry, he was found guilty of the misconduct and his services were terminated. Thereafter, he took up the matter in appeal and the appellate authority, despite holding that the said Kala

Mapa had committed misconduct, directed his reinstatement with punishment of stoppage of four increments. It appears that this order passed by the appellate forum persuaded the learned Single Judge not to interfere in the matter. The order passed by the learned Single Judge says that the counsel appearing for the workman had submitted that the punishment of stoppage of reduction of the pay by four stages with cumulative effect will be acceptable to the respondent-workman. The learned Single Judge has left open the matter for the Corporation with a direction to reinstate the respondent-workman in terms of the award with continuity of services, but with the appropriate punishment as indicated in his order.

6. After going through the records and taking into consideration the fact that similarly situated employee was allowed to be reinstated and the fact that the act on the part of the appellate authority persuaded the learned Single Judge not to interfere in the matter, we refuse to interfere in the appeal.

7. We, however, make it clear that the order made by the appellate authority in case of such misconduct ordinarily should not have provided a precedent, because, if such sympathy is shown in favour of those

who have played fraud in securing a job, then, we would be extending unnecessary help in favour of those who have committed misconduct. We make it clear that the order made by the appellate forum in case of Kala Mafa, so also this judgment, conforming the judgment of the learned Single Judge shall not be taken to be a precedent for all time to come. The appeal is dismissed.

[R.S. GARG, J.]

[RAVI R. TRIPATHI, J.]

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